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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/877,155	06/17/1997	MICHEL J. N. CORMIER	ARC2466R1	5759

7590

08/12/2005

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EXAMINER

KENNEDY, SHARON E

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

08/877,155

Applicant(s)

CORMIER ET AL.

Examiner

Sharon Kennedy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6,7,30,31,55,57-74,76-78,80-91,93-97 and 99-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 58 and 77 is/are allowed.
- 6) ☒ Claim(s) 6,7,30,31,55,57 59-74,76,78,80-91,93-97 and 99-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant must add "identical and uniform configuration" to the specification to provide antecedent basis for the claims. This would not be new matter as this subject matter is easily discernable from the disclosure.

#### ***Claim Rejections - 35 USC § 112***

Claims **6**, 7, 55, 57, 59-73, 93-97; **30**, 31, 74, 76, 78, 80-91, 99-104 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 6 and 30 state that "each of the plurality of blades has a substantially identical and uniform configuration." In addition to the above antecedent basis problem, the examiner finds an additional problem in the way applicant has chosen to characterize this language in the Remarks/Arguments section. Applicant states that this language does not omit non-identical and non-uniform configurations. Of course, applicant's figure 2 readily shows several types of blades. To correct, applicant should delete "each of the" and insert --a--. Thus, the claims would read, "... a plurality of blades has a substantially identical and uniform configuration." This language is sufficient to overcome the Ganderton '097 structure.

Further regarding claim 74, this claims calls for "at least one additional anchoring means" when claim 30 does not require a first anchoring means. (This portion of the claim was deleted.)

***Claim Rejections - 35 USC § 102***

Claims 30, 31, 74, 76, 78, 83, 84, 89, 90, 105, 106 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rosenthal, US 3,072,122. See especially figure 9. It is noted that applicant has deleted the adhesive portion of the claim. Regarding claim 31, the examiner takes the position that the antigenic substance referred to in column 2, line 26 anticipates the claimed polypeptide or protein. Regarding claims 74, 105, 106, note holes 16e in Rosenthal figure 10 and compare to applicant's description in published application [0058], lines 7-11 of that paragraph. Claim 76 is rejected because further limiting one specie of the Markush group of claim 74 does not negate the other species unless specifically stated. Regarding claim 78, the examiner takes the position that this claim could imply the etching or small pits described in the specification at [0058], line 6. Rosenthal shows this feature in figures 11 and 12.

***Claim Rejections - 35 USC § 103***

Claims 81, 82, 87, 88, 99, 100-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenthal '122. It is well established that changes in sizes or proportions are *prima facie* obvious in the lack of a showing of criticality. See MPEP 2144.04, IV. A., entitled, "Changes in Size/Proportion." Applicant's specification does

not assert any unusual feature resulting from miniaturizing or multiplying the blades; accordingly, the claims must be rejected.

***Allowable Subject Matter***

Claims 6, 7, 55, 57, 59-73, 93-97 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 80, 85, 86, 91, 104 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 58 and 77 are allowed.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571/272-6996.

Information regarding the status of an application may be obtained by going to [www.uspto.gov](http://www.uspto.gov), clicking on "Status & IFW", entering the application number, and then clicking on one of the tabs to retrieve the appropriate information.

  
Sharon Kennedy  
Primary Examiner  
Art Unit 3762